

REMARKS

Claims 1-12, and 14-24 were presented for examination. Claim 13 has been cancelled without prejudice or disclaimer. Claims 25 and 26 have been added.

The drawings have been objected to. In response, formal drawings are submitted herewith.

Claims 1-12 have been rejected under 35 U.S.C. 103(a) as being unpatentable over Yamada in view of Domain.

To expedite prosecution, claim 1 has been amended to recite that the drive-through purchase obtaining facility includes:

- multiple pick-up stations, each of the pick-up stations being arranged for enabling the customer in the vehicle to pick up the ordered purchase delivered to the vehicle, and
- a control station responsive to identification (ID) data provided by the customer for automatically assigning a pick-up station of the multiple pick-up stations to the customer.

It is noted that this subject matter is similar to the subject matter recited in the original claims 3 and 4. With respect to the subject matter of claim 4, the Examiner relied upon Domain, col. 5, lines 10-40 and col. 8, lines 5-10, and also on the Official Notice that “it has been held that broadly providing automatic means to replace manual activity which has accomplished the same result involves only routine skill in the art.”

Considering Domain, the reference discloses a Vendors’ Structural Complex that consolidates several vendors of retail goods and services, or a single vendor that provides various goods and services in a single drive-through complex (col. 1, lines 6-13).

The complex “is comprised of a central warehouse facility, several customer order stations interconnected with the warehouse facility, several customer pick-up stations

interconnected with the warehouse facility, and a network of vehicle routing lanes extending through the warehouse facility and passing by the customer order stations and pick-up stations. Customers using the Complex are directed along the routing lanes to an order station where they place orders for goods and/or services provided by the vendors housed in the Vendors' Complex. The customers are then directed to drive to a particular pick-up station where they receive their ordered goods." (col. 2, lines 33-46).

When a customer places an order at the order station, "the customer receives instructions from the order clerk as to which pick-up station to drive to along with the receipt for their (sic) purchase. Three of the nine pick-up stations are accessible from each of the customer order stations." (col. 5, lines 9-16).

The reference specifies that the receipt for the purchase "identifies which pick-up station the customer should proceed to to receive their (sic) ordered goods." (col. 8, lines 7-9).

Hence, by contrast with the claimed invention, the pick-up stations of Domain are not provided for obtaining orders placed in advance.

Further, as the Examiner recognizes, the pick-up stations are not assigned automatically.

Moreover, the pick-up stations are not assigned in response to ID data provided by the customer, as claim 1 requires.

As discussed above, the Examiner has taken the position that "broadly providing automatic means to replace manual activity which has accomplished the same result involves only routine skill in the art."

However, the manual activity of Domain does not accomplish the same result as the claimed control station responsive to identification (ID) data provided by the customer for automatically assigning a pick-up station of the multiple pick-up stations to the customer.

As discussed in the specification, the claimed control station increases the throughput of the facility where customers obtain purchases ordered in advance. As a result, when customers arrive to obtain the ordered purchase, they do not need to wait in lines even during rush hours.

The manual activity of Domain does not achieve this result. Instead, the Domain pick-up stations are assigned to enable vendors to efficiently deliver goods and/or services ordered at the customer order station to the respective pick-up station.

For example, by contrast with the claimed automatic assignment arrangement that assigns the pick-up station in response to customer's information when the customer arrives, and releases the pick-up station when the customer obtains the ordered purchase, the Domain manual assignment of the pick-up stations provides no means to avoid a situation when more than one customer is assigned to a particular pick-up station, and another pick-up station is empty.

In particular, the Domain structure has three ordering stations, and three purchase pick-up stations associated with each ordering stations. Hence, when all three pick-up stations associated with a first ordering station are busy, and a pick-up station associated with another ordering station is vacant, a clerk at the first ordering station cannot assign the vacant pick-up station to the customer that places an order at this ordering station.

One skilled in the art would realize that it makes no sense for Domain to increase the throughput of the pick-up stations because customers should wait a substantial period of time

until their ordered goods are collected from different vendors, packed and delivered to the pick-up station. This time period substantially exceeds any waiting period associated with the pick-up stations.

Hence, the manual activity of Domain does not accomplish the same result as the claimed automatic arrangement. Accordingly, the Examiner's conclusion of obviousness is not warranted.

As the Examiner recognizes, Yamada also does not disclose the claimed control station responsive to identification data provided by the customer for automatically assigning a pick-up station of the multiple pick-up stations to the customer.

Accordingly, the applied references do not disclose the claimed arrangement.

It is well settled that the test for obviousness is what the combined teachings of the references would have suggested to those having ordinary skill in the art. ***Cable Electric Products, Inc. v. Genmark, Inc.***, 770 F.2d 1015, 226 USPQ 881 (Fed. Cir. 1985). In determining whether a case of *prima facie* obviousness exists, it is necessary to ascertain whether the prior art teachings appear to be sufficient to one of ordinary skill in the art to suggest making the claimed substitution or other modification. ***In re Lalu***, 747 F.2d 703, 705, 223 USPQ 1257, 1258 (Fed. Cir. 1984).

As discussed above, the prior art teachings are not sufficient to arrive at the claimed invention.

Moreover, to establish a *prima facie* case of obviousness under 35 U.S.C. § 103, two basic criteria must be met. First, there must be some suggestion or motivation in the references themselves to modify the reference or to combine reference teachings. Second, there must be a

reasonable expectation of success for the modification or combination of references. The teaching or suggestion to make the modification or combination of prior art and the reasonable expectation of success must both be found in the prior art, and not based on Applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991).

Yamada discloses an online shopping system that enables a customer to order a purchase in advance, and pick up the purchase at a convenience store.

As discussed above, Domain teaches a complex where a customer can order goods at the ordering station and pick up them immediately at the pick-up station located in the same complex.

The Examiner has taken the position that it would have been obvious to include the pick-up stations of Domain in the Yamada system.

However, as demonstrated below, the Domain patent expressly teaches away from the combination suggested by the Examiner thereby constituting **evidence of nonobviousness**. *In re Bell*, 991 F.2d 781, 26 USPQ2d 1529 (Fed. Cir. 1993); *In re Hedges*, 783 F.2d 1038, 228 USPQ 685 (Fed. Cir. 1986); *In re Marshall*, 578 F.2d 301, 198 USPQ 344 (CCPA 1978).

In particular, Domain discloses that each of the express vendor locations is provided with a drive-in window (not shown) accessible from the vehicle routing lanes. The express grocery is also provided with a walk-up window (not shown) assessable from a sidewalk 48 bordering the structure 36 of the Complex. From the drive-in or walk-up windows, orders submitted by telephone or facsimile may be picked up by customers. (col. 3, lines 17-36, col. 11, lines 18-27).

Hence, Domain teaches that the orders placed in advance (before customers arrive at the Vendors' Complex) are picked up through the drive-in or walk-up windows rather than at the pick-

up stations. It is noted that these windows, which are not shown in the drawings, are different from the pick-up stations 16 associated with the ordering stations 14 (FIG. 5 of Domain).

Accordingly, Domain would suggest using the drive-in or walk-up windows for picking up a purchase ordered in advance using the Yamada system. It is noted that these windows are neither manually nor automatically assigned to arriving customers.

Therefore, Domain constitutes an **evidence of nonobviousness** of the invention recited in the amended claim 1.

In addition, the applied combination of references does not teach or suggest the features recited in the amended dependent claims 2-12.

Claims 14-21 have been rejected under 35 U.S.C. 103(a) as being unpatentable over Yamada in view of Domain and further in view of Official Notice.

Independent claim 14, as amended, recites a method of selling goods, comprising the steps of:

- storing the goods available for sale in a storage facility,
- enabling a customer to order a purchase,
- providing a drive-through purchase obtaining facility remote with respect to the storage facility and having multiple pick-up stations, each arranged for enabling the customer in a vehicle to pick up the ordered purchase delivered to the vehicle, and
- automatically assigning to the customer one of said multiple pick-up stations in response to information provided by the customer when the customer arrives at the drive-through purchase obtaining facility.

The Examiner relied upon Domain, col. 9, lines 30-35, and also on the Official Notice that “it has been held that broadly providing automatic means to replace manual activity which has accomplished the same result involves only routine skill in the art” for disclosing the step of automatically assigning to the customer one of said multiple pick-up stations in response to information provided by the customer when the customer arrives at the drive-through purchase obtaining facility.

Considering the reference, in col. 9, lines 30-35, Domain discloses that after placing their orders, the customers are directed to drive to order pick-up stations where they receive their ordered goods.

First, as discussed above, the combination of Yamada with Domain does not teach or suggest assigning to the customer one of said multiple pick-up stations in response to information provided by the customer when the customer arrives at the drive-through purchase obtaining facility.

Further, as the Examiner recognizes none of the reference suggests performing this assignment automatically.

As discussed above, the manual activity of Domain does not accomplish the same result as the claimed automatic arrangement. Accordingly, the Examiner’s Official Notice is not warranted.

Further, as discussed above, the Domain patent expressly teaches away from the combination suggested by the Examiner thereby constituting **evidence of nonobviousness**.

Accordingly, the Examiner's conclusion of obviousness with respect to the subject matter of independent claim 14 is not warranted.

Further, the reference combination would not teach or suggest the subject matter of claims 15-21 dependent from claim 14.

Claims 22-24 have been rejected under 35 U.S.C. 103(a) as being unpatentable over Domain and further in view of Official Notice.

Independent claim 22 recites a drive-through retail facility for enabling a customer in a vehicle to make a purchase without leaving the vehicle. The retail facility comprises multiple purchase pick-up stations, and an assignment arrangement for automatically assigning one of the multiple pick-up stations to the customer in response to information provided by the customer.

The Examiner relied upon Domain, col. 9, lines 30-35, and also on the Official Notice that "it has been held that broadly providing automatic means to replace manual activity which has accomplished the same result involves only routine skill in the art" for disclosing the claimed assignment arrangement.

First, it is respectfully submitted that Domain does not teach or suggest assigning one of the multiple pick-up stations to the customer in response to ID information provided by the customer.

Further, as discussed above in connection with claim 1, the manual activity of Domain does not accomplish the same result as the claimed assignment arrangement. Therefore, the Examiner's Official Notice is not warranted.

Application No.: 09/840,070

Accordingly, the subject matter of claim 22 is not obvious over Domain.

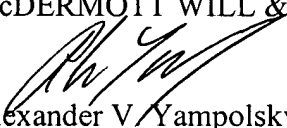
Moreover, Domain does not teach or suggest the subject matter of claims 23-26 dependent from claim 22.

In view of the foregoing, and in summary, claims 1-12 and 14-26 are considered to be in condition for allowance. Favorable reconsideration of this application, as amended, is respectfully requested.

To the extent necessary, a petition for an extension of time under 37 C.F.R. 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account 500417 and please credit any excess fees to such deposit account.

Respectfully submitted,

McDERMOTT WILL & EMERY LLP



Alexander V. Yampolsky
Registration No. 36,324

600 13th Street, N.W.
Washington, DC 20005-3096
Phone: 202.756.8000 AVY:MWE
Facsimile: 202.756.8087
Date: March 15, 2005

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